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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-196461

DATE: February 13, 1980

MATTER OF: Thomas M. Welsch

**DIGEST:** Service member receiving unexplained payments due to administrative error after discharge should have known he was receiving excess payments and that he would be required to refund them. Therefore, he is not without fault in the matter so as to permit waiver of his debt. Further, financial hardship, alone, resulting from collection is not a sufficient reason for a member to retain the payments that he should have known did not belong to him. However, waiver may be granted for overpayment of his final payment upon discharge since at that time there was insufficient information available to him to determine that he was being overpaid.

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Mr. Thomas M. Welsch requests reconsideration of our Claims Division's May 29, 1979 denial of his application for waiver of his debt to the United States in the total amount of \$709.07. The debt arose from erroneous payments of pay and allowances, including separation pay made to him incident to his service in the United States Air Force. Waiver is granted for erroneous payments made on discharge when the error was not apparent and denial of waiver of payments after discharge is sustained.

Mr. Welsch received a payment of \$650 when discharged from the Air Force on November 8, 1974, which exceeded the amount he was entitled to receive. He was not due severance pay or disability pay and his entitlement consisted of \$123.44 base pay, \$3.47 foreign duty pay, \$2.24 clothing allowance, and \$322.60 for accumulated leave totaling \$451.75; less deductions of \$64.30 for Federal income tax, \$54.16 for Federal Insurance Contributions Act tax, and \$3.65 for Government Life Insurance and Soldier's Home totaling \$122.11, with a net entitlement of \$329.64. Thus, the \$650 separation payment exceeded his entitlement by \$320.36. Further, after discharge he received a regular midmonth payment of \$194.47 on November 15, 1974, and a regular end-of-month payment of \$194.24 on November 30, 1974, creating total erroneous payment of \$709.07.

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Mr. Welsch, in his original request for waiver, contended that while stationed in Thailand he was hospitalized and subsequently air-evacuated to Texas for a period of continued treatment 6 weeks or more before discharge and he did not receive payroll information during this period. He indicated that he was confused and believed the additional pay was attributable to an erroneous absence without leave, that his pay was being deposited in the Bank of Utah at Ogden, and that he did not receive an itemized statement of his final pay or a Leave and Earnings Statement (LES) with such pay. Further, he stated that he was unable to pay the indebtedness due to a lack of funds. In his appeal, he also indicates that the circumstances of his illness and his inability to pay should provide a sufficient basis for waiver of the indebtedness.

Section 2774 of title 10, United States Code (1976), provides our authority to waive certain debts when collection would be against equity and good conscience and not in the best interests of the United States. However, subsection 2774(b) precludes waiver if in the opinion of the Comptroller General—

"\* \* \* there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member \* \* \*"

We interpret the word "fault", as used in 10 U.S.C. 2774, as including something more than a proven overt act or omission by the member. Thus, we consider fault to exist if in light of all of the facts it is determined that the member should have known that an error existed and taken action to have it corrected. The standard we employ is to determine whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. See decisions B-184514, September 10, 1975, and B-193450, February 26, 1979.

In the present situation, it does not appear that Mr. Welsch was furnished sufficient information to determine that he was overpaid in his final payment of \$650 upon discharge or that he was aware that an error existed which he might have corrected until he was notified that such error had been discovered in February 1975 by the Air Force Finance and Accounting Center.

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While his decision to have his payments deposited directly to his bank account does not relieve him of responsibility to determine the appropriate amount or to question excessive payments, on the record before us it appears that he may have reasonably considered that the amount of pay he received upon discharge was correct. Therefore, the excess payment of \$320.36 should be waived. However, upon discharge and receipt of this final payment, he had no reason to believe that he should receive further unexplained payments of \$194.47 on November 15, 1974, and \$194.24 on November 30, 1974, totaling \$388.71.

Therefore Mr. Welsch should have known beginning November 15, 1974, and again November 30, 1974, that he was receiving monies to which he was not entitled. Such knowledge on his part carried with it a duty and legal obligation to bring it to the attention of appropriate officials and to return the excess sums or set aside this amount for refund at such time as the administrative error was corrected. Since he did not do so, it is our view that he did not accept such payments in good faith, he is not free from fault, and collection action is not against equity and good conscience nor contrary to the best interests of the United States. Further, financial hardship resulting from collection is not a sufficient reason to retain the payments that he should have known did not belong to him. B-183460, May 28, 1975.

Accordingly, waiver is granted for the excess payment made on November 8, 1974, in the amount of \$320.36, but the action taken by our Claims Division denying waiver for payments of pay and allowances after discharge in the amount of \$388.71 is sustained.

  
Deputy Comptroller General  
of the United States